IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6966 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JIGNESH GIRI KAILASH GIRI GOSWAMI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MANOJ N POPAT for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR AJAYKUMAR CHOKSI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2007

ORAL JUDGMENT

1. ***Rule***. Mr.M.R.Mengdey, learned Additional Public Prosecutor waives service of rule on behalf of respondent No.1. Mr.Choksi, learned Advocate waives

service of rule on behalf of respondent No.2. With the consent of the learned Advocates appearing on behalf of the respective parties, the matter is taken for final hearing today.

2. By way of this application under Section 482 of the Criminal Procedure Code, the petitioner – accused has prayed for an appropriate order to quash and set aside the FIR being C.R.No. I -310/2007 registered with Makarpura Police Station, Baroda. The FIR has been lodged by respondent No.2- original complainant – erstwhile wife of the petitioner with Makarpura Police Station, Baroda on 17.06.2007 against the petitioner- erstwhile husband of original complainant for the offences punishable under Section 498(A) of the Indian Penal Code read with Section 3(a)(b) of the Domestic Violence Act, 2005 alleging *inter-alia* that the petitioner was ill-treating her and thereafter, has got signature on the divorce papers and obtained divorce. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present application under Section 482 of the Criminal Procedure Code to quash and set aside the said FIR.

3. Mr.Popat, learned Advocate appearing on behalf of the petitioner has vehemently submitted that infact divorce decree dated 16.11.2006 has been passed by the learned Principal Senior Civil Judge, Vadodara in Hindu Marriage Petition No. 453 of 2006 in a application under Section13(B) of the Hindu Marriage Act. Even deposition of respondent No.2 -Wife was also recorded and considering the oral evidence on oath *vide* Exhs. 9 and 10, the learned Judge has passed decree of divorce. It is submitted that when there is no relationship of husband and wife between the petitioner and respondent No.2, it cannot be said that the petitioner has committed any offence under Section 498(A) of the IPC and/or any other offences as alleged.

4. On the other hand Mr.Choksi, learned Advocate appearing on behalf of respondent No.2 has submitted that even after divorce decree dated 16.11.2006, the parties have lived together upto May, 2007 and huge amount is to be paid by the petitioner by way of loan taken in the name of respondent No.2 and/or her father. It is submitted by him that

looking to the averments and allegations in the complaint, if this Court is of the opinion that impugned complaint requires to be quashed and set aside, in that case, liberty may be reserved in favour of respondent No.2 to initiate appropriate proceedings against the petitioner for recovery of the loan amount and/or for any other reliefs as according to the him the petitioner has even cheated respondent No.2 and given false promise to remarry again after divorce decree.

5. Mr.M.R.Mengdey, learned APP has requested to pass appropriate order considering the averments and allegations in the complaint.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. It is required to be noted that impugned complaint has been filed on 17.06.2007 for the offences punishable under Section 498(A) of the IPC and under Section 3(a)(b) of the Domestic Violence Act and it is alleged that the petitioner was harassing respondent No.2 – original complainant and

has obtained signature on the blank papers for getting divorce and has deserted respondent No.2-original complainant. Now it is to be noted that one Hindu Marriage Petition No. 453 of 2006 was filed by the petitioner as well as respondent No.2 jointly under Section 13(B) of the Hindu Marriage Act in the Court of learned Principal Senior Civil Judge, Vadodara. The learned Judge *vide* judgment and decree dated 16.11.2006 has allowed the said application and thereby marriage between the parties stood dissolved. It is required to be noted that in the said judgment and decree, the learned Judge has specifically observed that the petitioner herein i.e. Husband has submitted his deposition on affidavit *vide* Exh.6 whereas original complainant – Wife has submitted her deposition on affidavit *vide* Exh.7. Both the petitioners have also led oral evidence on oath *vide* Exh.9 and Exh.10 respectively. Thus, it cannot be said that the petitioner has obtained signature on blank paper for getting divorce as stated above Wife was examined on oath before the learned trial Court. Under the circumstances allegations with regard to obtaining signature on blank paper for getting

divorce decree cannot be accepted. Assuming that even after divorce and marriage is dissolved between the parties, the parties have stayed together, in that case also provisions of Section 498(A) would not be applicable as there is no relationship of husband and wife between the parties. In view of above, even considering the averments and allegations in the complaint to be taken on its face value, then also no case is made out under Section 498(A) of the IPC and under section 3(a)(b) of the Domestic Violence Act. Under the circumstances and in the facts and circumstances, the case falls within the parameter to exercise power under Section 482 of the Criminal Procedure Code. Considering above, impugned FIR requires to be quashed and set aside.

8. For the reasons stated above, the impugned complaint/FIR being C.R.No.I-310/2007 registered with Makarpura Police Station, Baroda is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, it is observed that it will be open for respondent No.2 to initiate appropriate proceedings before the appropriate forum if they are available with respondent No.2 either for recovery of

loan amount and/or for any other reliefs. As and when such proceedings are initiated, the same shall be considered in accordance with law and on merits for which this Court has not expressed any opinion.

[M.R.Shah, J.]

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